DOCUMENT RESUME

ED 168 375 HE 010 876

AUTHOR Sorgman, Margo
TITLE No Room at the Top: Sex Discrimination in Higher Education.
PUB DATE [78]
NOTE 24p.

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Case Studies; *College Faculty; Court Cases; Employment Opportunities; *Equal Opportunities (Jobs); *Federal Legislation; Federal Regulation; *Females; *Higher Education; *Sex Discrimination; Women Professors
IDENTIFIERS Civil Rights Act of 1964 Title VII; Equal Opportunity Act of 1972; Equal Pay Act of 1963; Executive Order 11246; Executive Order 11375; Higher Education Act of 1972; Higher Education Amendments of 1972; Title IX

ABSTRACT

Data are presented on women in higher education, along with information on federal legislation to eliminate sex discrimination, issues concerning redressing employment discrimination, specific problems with legislative procedures and enforcement of legislation, and case studies that highlight some of the processes involved. Evidence is cited that demonstrates patterns of discrimination against women faculty members. Title VII of the 1964 Civil Rights Act, The Equal Opportunity Act of 1972, the Higher Education Amendments of 1972, the Equal Pay Act of 1963, Title IX of the Higher Education Act of 1972, and Executive Orders 11246 and 11375 are cited. The following factors concerning the predicament of women faculty members in regard to employment discrimination are discussed: the recency of legal protection and the few precedents; the focusing of attention on pattern and practice and class action cases, rather than on individual complaints; general societal attitudes toward academia and academic women; and three types of discrimination. Specific loopholes that women need to take into account when seeking redress from employment discrimination are discussed. One major factor working against the complainant is time; unless a preliminary injunction is granted, a considerable period of time can be expected to elapse before she is granted reinstatement and/or tenure. Injunctions are granted only if "irreparable damage" can be demonstrated to occur should she be terminated or not promoted. Specific problems with Title IX procedures and enforcement and with Executive Orders are covered. (SW)

**********
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
**********

Margo Sorgman
Department of Education
University of Utah
142 Milton Bennion Hall
Salt Lake City, Utah

Sorgman/Aetz

ED168375

# NO ROOM AT THE TOP: SEX DISCRIMINATION IN HIGHER EDUCATION

## THE CASE FOR DISCRIMINATION

One might ask "where have all the women gone" when looking at the rate of attrition of females in higher education. While women make up 46% of undergraduate students, the proportion drops to 37% of graduates, 27% of faculty, and less than 9% of full professors. Women are also conspicuously absent from positions of administrative importance, a finding reported by the Carnegie Commission Report in 1973. They state that:

> "They are so rarely represented in top academic administrative positions as to be practically non-existent in upper echelons.... In the latter part of 1971, virtually no four year coed institution was headed by a woman. Even among non-sectarian women's colleges, there were only eight female presidents, in marked contrast with the situation in the latter part of the 19th century and early years of the present century." (1)

Focusing attention on faculty women, the patterns of discrimination becomes apparent. Typically, women are underrepresented (see Table I), even in areas which have an above average representation of female students (such as fine arts) as well as fields which typically have appealed to female students (education). Where women do exist, they are primarily in the lowest non-career rank of instructor or in less prestigious institutions such as junior and community colleges, where they make up 40% of the faculty. Interestingly enough, the more prestigious a university or college, the fewer women represented.

A factor related to academic rank is academic tenure. The Carnegie Commission found that in addition to more men receiving tenure than women, men, on the average, received tenure at an earlier age.(2) Even when credentials are identical such as earned doctorate and twenty years of service, less than 50% of the female

HE 010 876

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Margo Sorgman

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) AND USERS OF THE ERIC SYSTEM"

CN001262

Table I

Women as Faculty Members and Academic Administrators[3]

| Faculty rank | 1959-60 | | 1965-66 | | 1971-72 | |
|---|---|---|---|---|---|---|
| | women | men | women | men | women | men |
| All ranks | 19.15 | 80.9 | 18.4 | 81.6 | 19.0 | 81.0 |
| Professor | 9.9 | 90.1 | 8.7 | 91.3 | 8.6 | 91.4 |
| Associate Professor | 17.5 | 82.5 | 15.1 | 84.9 | 14.6 | 85.4 |
| Assistant Professor | 21.7 | 78.3 | 19.4 | 80.6 | 20.7 | 79.3 |
| Instructor | 29.3 | 70.7 | 32.5 | 67.5 | 39.4 | 60.6 |

Source: National Education Association (1972, p. 13).

faculty achieve full professorship, as compared to 90% of their male counterparts. A study by Astin and Bayer, reported that when factors relevant to rank, tenure, and salary are controlled, sex is still the critical variable. They state:

> "Much of the differential could still be attributed solely to sex. Indeed sex is a better independent predictor of rank than such factors as the number of years since completion of education, the number of years employed at the present institution, or the number of books published. The results clearly demonstrate the biases operating against women in academe with respect to rank."(4)

Not only are women underrepresented, but they are underrenumerated as well. Salary differentials of male and female faculty can range from 5% to 50% even when credentials and professional productivity were held constant. This is supported by the Carnegie Commission finding that average differentials range between $1500-$2000. Similarly, the Astin and Bayer study concluded that:

> "Women generally hold lower ranks and make lower salaries, however comparable their backgrounds, work activities, achievement, and institutional work-settings to those of their male colleagues. Considering the many variables in these analyses, one can only conclude that sex discrimination is rampant in academe."(5)

The following table of actionable charges made to EEOC (Equal Employment Opportunity Commission) reveals that the majority of cases of discrimination filed against private employers are for race discrimination, as opposed to sex discrimination for universities. From the categories listed, one can conclude that faculty women are, indeed, underrepresented and underrenumerated.

Table II

ACTIONABLE CHARGES TO EEOC[6]
Fiscal Year 1974
Five Most Common Categories

| Private Employer | Race | Sex-F | Total |
|---|---|---|---|
| Hiring | 68% (5443) | 32% (2590) | 8,033 |
| Discharge | 75% (9919) | 25% (3246) | 13,165 |
| Promotion | 66% (3832) | 34% (1975) | 5,807 |
| Wages | 51% (3139) | 49% (3044) | 6,183 |
| Terms & Conditions | 65% (7708) | 35% (4134) | 11,842 |
| **Education (Public Universities and Colleges)** | | | |
| Hiring | 40% (147) | 60% (217) | 364 |
| Discharge | 55% (137) | 45% (110) | 247 |
| Promotion | 35% (100) | 65% (187) | 287 |
| Wages | 22% (75) | 78% (262) | 337 |
| Terms & Conditions | 40% (171) | 60% (252) | 42[illegible] |

FEDERAL MEASURES

The necessity for legislative and judicial action by the federal government to eliminate sex discrimination has resulted in four landmark measures:

1. Title VII of the 1964 Civil Rights Act forbids discrimination in employment on the grounds of race, color, sex, religion, or national origin. This has been revised by the Equal Opportunity Act of 1972 to cover employees of state and local governments as well as educational institutions, public or private, which have 15 or more employees. In effect, this act makes it illegal to discriminate in the following areas: recruitment, hiring, firing, lay-off, recall,

wages, terms of employment, promotion, assignments, training, sick leave, vacation, overtime, insurance coverage, and retirement. Title VII is administered by EEOC which receives and investigates charges of discrimination. In addition, individuals may file a complaint charging a pattern of discrimination and exercise their right to litigate.

2. Another anti-discrimination measure is the Higher Education Amendments of 1972 which includes extension of the Equal Pay Act of 1963 to executive, administrative, and professional employees including all faculty. Basically, this calls for substantially similar pay schedules for men and women working under similar conditions which require equal skill, effort, and responsibility.

3. Title IX of the Higher Education Act of 1972, in addition to dealing with employment discrimination, extends protection to students. It states that "no person shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance."

4. Executive Order 11246 as amended by Executive Order 11375 of 1967 requires universities and colleges receiving over $10,000 in federal contracts to establish an affirmative action plan which specifies goals and timetables to eliminate discrimination in employment.

PROBLEMS OF REDRESS

When considering faculty women's predicament in regards to employment discrimination, several factors are important. First, the history of litigation in employment discrimination is very recent. Academic women had virtually no legal protection before 1972. Since no cases of university women have yet been completed in court, very little precedent has been established. Most court time

has been spent deciding which, if any, of the employment laws are relevant to academic sex discrimination, and whether or not specific universities are liable for suit. Court time has also been spent ordering colleges to provide comparative data to civil rights investigators.

A second, and related factor has to do with priorities. Most attention has been given to blacks employed in the private sector. Moreover, attention has been focused first on "pattern and practice" and class action cases, rather than on individual complaints. This policy is reflected in an HEW document discussion of Title IX:

> "Our aim will be to focus HEW's enforcement machinery on the main, systemic forms of discrimination, and give priority attention to these, rather than follow an approach in which priorities are dictated by the morning's mail, and each complaint, whether specious or not, must be fully investigated, just because the complaint has been made."(7)

The attention that has been paid to individual complaints has not focused on litigation or punishment of employers, but rather on theoretically wide-ranging "voluntary compliance" and "affirmative action" programs. It has been predicted that much of Title IX's activities will be diverted into establishing "equal opportunity" in athletic programs rather than individual faculty women's complaints.

A third related issue concerns general societal attitudes towards academia and academic women. Academic administrators are often viewed as highly prestigious and powerful, and easily intimidate civil rights investigators. The political power of the university in the community and in Washington are not to be underestimated. For example, when the New York State Supreme Court upheld the decision of the New York Human Rights Appeal Board, and ordered Columbia University to hire Dr. Alberta Gilinsky, Columbia received the support of the American

Association of Universities in appealing to the Court of Appeals for "academic freedom". Academic administrators effectively appeal to the ideals of "academic freedom", "professionalism", and "meritocracy", and other phrases which legitimize subjective decisions, not to mention the spectre of "academic due process", regardless of whether or not it resembles legal due process. Even attorneys hesitate to become involved in suits against higher education, due to the academicians' attitude of being above and beyond the law.

The mystique of power, privilege, and prestige surrounding academicians can be expected to be transferred somewhat to academic women. Highly educated women may be viewed as "pampered". They are theoretically articulate, more able than most to finance private litigation, more able to obtain other employment---in short, able to "fend for themselves", without need of government intervention. The fact that they may be married to a man involved in a profession only adds to the impression that they are self-sufficient and responsible for their own "individual" problem.

A fourth general issue has to do with the specific ways and means of discrimination endemic to academia. It is generally recognized that there are basically three types of "discrimination". First, there is "explicit" discrimination, where an employer has a blatant policy of simply not hiring women, or where a woman is terminated for some reason dealing specifically with her sex, such as pregnancy. Second, "implicit" discrimination occurs when a test or criterion of employment discriminates against some group, such as a culture-bound "I.Q." test. The existence of these two types of discrimination are relatively easy to establish in court, but are more typical when discrimination is based on race, color, national origin, or religion, rather than sex. The third type of discrimination

refers to the "disparate application of employment criteria" -- when, for example, men are warned to publish more while women are terminated for not publishing enough. This practice is complex and difficult to prove, yet is what most commonly occurs in academic discrimination.

With these general difficulties in mind, following are more specific loopholes that women need to take into account when seeking redress from employment discrimination.

One of the most immediate difficulties is in "making the case" to begin with. Many universities have, as part of their "affirmative action" programs, bureaucratic channels for discrimination charges. The burden of proof is on the complainant to establish discrimination, yet the complainant is given little or no access to comparative information. Consider the not too hypothetical example of a woman who has been receiving low salary increments for the last three years. She knows that she is making less than the few males in the department with whom she feels free to share salary information. "Explanations" for the differentials come readily to mind, unless she is clearly superior to all males on all counts: one male has published more than she has, one is more popular with students, one serves on the prestigious University X Committee, and so on, ad infinitum. Asking the department chairman or dean for an explanation will probably result in rhetoric from the Administrator's Guidebook of Cliches, such as, "I am not at liberty to divulge confidential and sensitive information, but I can assure you that those decisions are based on each individual's merit, as reflected in his overall record, on balance. It certainly has nothing to do with sex...."

Blocked at the University level, the complainant has little choice but to file for an investigation by EEOC or HEW. Neither of these agencies will be

overly enthused about a complainant who "suspects" discrimination, but has so little proof. Enthused or not, neither agency can be expected to investigate for at least a year. By then, departmental relations will be strained, University administrators may be "shocked and disappointed" that a person went "outside" when in-house procedures were so painstakingly provided, and reprisals can be expected.

If it is this difficult to instigate a complaint regarding an issue as relatively simple and objective as salary differentials, imagine the difficulties when one is terminated, and comparative data on sensitive factors such as quality of publications, teaching ability, community service, professional relationships, etc. is necessary. Even more difficult is the instance where "comparative data" exists only in the mind of a prejudicial administrator -- when, for example, a department chairman remembers "numerous serious complaints" from students regarding a female faculty member, but does not remember specifically what they were, or how many, or how they compare to complaints regarding male teachers.

Therefore, we can expect that complaints will be filed only in those cases where the complainant is overwhelmingly confident that she is superior to (or no worse than) males in regards to the multitude of subjective criteria collectively known as "professional merit". Moreover, only those cases which involve the loss of something drastic, such as failure to hire, or retain, or grant tenure, will be filed. Otherwise, the time, expense, and possibility of reprisal are so great as to hardly make the fight worth the effort.

One major factor working against the complainant is time. Unless a preliminary injunction is granted, a considerable period of time can be expected to elapse before she is granted reinstatement and/or tenure. Injunctions are only

granted if "irreparable damage" can be demonstrated to occur should she be terminated or not promoted. Since back pay is theoretically awarded should she win the case, the substantial discomfort of being without pay for as long as five years is not "irreparable". In the Johnson vs. University of Pennsylvania case, an injunction was granted because she had research funds that would be lost should she be terminated.

Certain time limits exist in the initial stages of filing complaints under Title VII. A complaint should be filed within 90 days of the alleged discrimination. It is not uncommon for the complaint to be referred to a state agency for 30-60 days, who may in turn refer it to the University for another 30 days. Consensus has it that this time period can be counted as wasted. If EEOC takes no action on the complaint after a wait of 180 days, which is likely, the complainant may request a right-to-sue letter. After this is received (again, another wait of 30-60 days is not uncommon), she must file in court within 90 days. Thus, a minimum one year delay can be expected before the formal discovery process can take place to assess how valid the case is.

When a right-to-sue letter is issued to a complainant, the case generally receives lower priority than those cases which do not intend to proceed with private litigation. If a complainant opts to rely on the good intentions of EEOC, the 2-7 year backlog of cases is a reality to be reckoned with. EEOC's annual report for 1974 estimated 60,000 new charges received that year, with another 78,500 investigations already in process. It had made 14,500 "determinations", but only 4,500 final settlements. In 1976, they estimated a backlog of over 120,000 cases.

If it determines in the complainant's favor EEOC lacks real enforcement power.

It is up to the discretion of the institution as to whether they wish to conciliate or not. If they do, a "conciliation agreement" can be a token, amounting to little more than an agreement "not to do it again". Besides the "conciliation" being accomplished with little real arbitration or discussion with the complainant, specific redress for the complainant may be lacking. Rather, some bureaucratic procedure may be instigated, such as placing more women on review committees, as evidence of "affirmative action".

At best, an EEOC or HEW investigation will provide an inexpensive discovery process whereby data can be gathered to take into court. Once a case is filed in court, although a rather strict time schedule is set, numerous delays are possible. Universities will complain that the request for statistics is "burdensome", comparative information is "sensitive", and the court's insistence that they be held accountable violates "academic freedom".

Overcoming the burden of time and expense, the "payoff" to winning a case is questionable. If reinstatement is awarded, relations with colleagues and students can be expected to be extremely strained. If access to university facilities are necessary to conduct research, one's publication record may have suffered in the interim. Although back pay is theoretically established as a "standard remedy" a Florida district court recently refused back pay damages to 9 university women. Other types of damages are difficult to prove. Punitive damages -- generally acknowledged as necessary to provide incentive to the University not to discriminate -- have not yet been awarded. Attorney's fees may be awarded, but not all costs involved in litigation are recoverable. In general, the court's philosophy is that the complainant should be "made whole", but not benefit, from the suit. For example, if the complainant were simply not hired or not reappointed,

it is unlikely the court would award tenure -- although 5-6 years may have elapsed since the original complaint.

In most cases of academic discrimination, a woman may file a charge with HEW under Title IX, as well as with EEOC under Title VII. The theoretical advantages of appealing to HEW rather than EEOC are that: 1)HEW is more familiar with educational discrimination, 2)their backlog is not as great as EEOC's, 3)their investigations are generally more thorough, and determinations more convincing than EEOC's, and 4)they can enforce the law by holding up federal funds to the school. Unfortunately, the disadvantages are as numerous: 1)if referred to HEW, EEOC may ignore the case, 2)HEW seems to give priority to pattern and practice suits, either ignoring individual complaints or referring them back to EEOC, 3)their investigations take longer and grant institutions much leeway for "in-house" arbitration, and 4)although they have made determinations against universities, they have never cut off federal funding.

Women's groups have analyzed in detail other specific problems with Title IX procedures and enforcement. Among these are the following:(8)

1. Institutions are required to keep "such records" and submit "timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the Director may determine to be necessary". This regulation is vague and does not tell institutions what kinds of records they should keep, in what form the records should be kept, or how long records should be kept.

2. The complainant must be notified "promptly" that the complaint has been received, but there is no requirement that the institution be notified. Since months or years may elapse before an investigation is begun, institutions will

not have the opportunity to resolve discrimination problems before a compliance review because they will not necessarily know that a complaint has even been filed against them.

3. Complaining parties are notified only after the investigation is finished. If a finding of noncompliance is made, the complainant is notified, but there is no requirement that the details of the letter of finding of noncompliance be given to the complainant. Complainants are not notified when an investigation is being conducted, nor are students and employees notified. Women's groups claim that the lack of notification that an investigation is being planned or carried out may deprive HEW of useful information needed for fair and accurate investigations. They note that notification after an investigation may cause more delay and further investigation because complainants often have information in addition to that contained in the formal allegations.

4. There is no time limit on how soon a letter of finding must be sent after an investigation. Under HEW's enforcement of Executive Order 11246, the time between investigations and a letter of finding has often been a matter of years, indeed some investigations have never been followed by a letter of finding either clearing the recipient, or finding it in noncompliance. Similar delays may occur under Title IX.

5. Only the institution can request a hearing after HEW makes a determination. Should complaining parties disagree with HEW's findings, there is no process whatsoever whereby they can obtain a formal hearing to appeal the decision. Women's groups claim this violates individuals' rights to due process.

6. The proposed regulations have very few examples of what is allowed or prohibited, although some examples were included in a Fact Sheet distributed by

HEW. Institutions will lack guidance if examples of permissible and prohibited practices are not incorporated into the regulations themselves.

7. Regulations require remedial action by institutions which previously discriminated; affirmative action is optional on the part of the institution in terms of overcoming effects of conditions which have resulted in limited participation by one sex. It is not clear whether the institution or HEW (or both) determine whether or not remedial action is required, or if a formal finding of discrimination is necessary for an institution to develop a remedial program. No self-evaluation by the institution is required to assess past discrimination. In the absence of self-evaluation that may inadvertently exist. No written plan of affirmative action is required.

The Executive Order is a vital federal measure of anti-discrimination since many institutions are so dependent on Federal funds. Some major problems have surfaced regarding these orders. 1)One problem is the lack of time limits set for issuing letters of finding, thereby dragging a complaint over a period of years. 2)While the major discrimination charge is underutilization of female competence, institutional compliance is merely a statement of "good faith" in recruitment and promotion. This often does not materialize into decisive action. 3)While complaints have been charged against 350 institutions since 1971 and reviews made on 200, only 40 institutions have had contracts delayed. 4)In addition, institutions with federal contracts under $10,000 are not required to have affirmative action plans. 5)Another problem has been the 5 year delay between the issuance of these executive orders and the promulgation and application of guidelines has caused much consternation with feminist groups.

CASE STUDIES

A brief look at specific cases will highlight some of the processes involved. Perhaps the most famous academic woman known in the history of attempted litigation is Bernice Sandler. In 1969 she was denied a position at the University of Maryland because she "came on too strong for a woman". At that, Title VII exempted educational institutions from liability, and the Equal Pay Act did not cover professional employees.

However, on the basis of Executive Order 11246, Sandler and WEAL (Women's Equity Action League) filed a class action suit in 1970 against all universities and colleges, with extensive statistical documentation alleging "industry-wide" discrimination. More than 360 specific complaints were filed against colleges, including the entire state university and college systems of California, Florida, New Jersey, and New York.

Little came of this massive campaign. While it mobilized action on the part of many local women's groups, it also mobilized an effective "backlash" from groups charging "reverse discrimination". Although over 75% of these complaints were shown to be without cause, the priority given to these cases pushed other complaints further into the backlog. In June, 1975, HEW warned 29 colleges and universities that they would lose federal contracts because of inadequate affirmative action plans. As the result of a conference between HEW secretary Caspar Weinberger and the college heads, the schools got their contracts after signing very weak agreements. The University of Wisconsin held out for an even weaker agreement, with no loss of federal funds. The University of Maryland took HEW to court, charging lack of due process, and won.

Another case exemplifies the amount of time involved in litigation. Phyllis Rackin was denied promotion and tenure at the University of Pennsylvania in 1971.

Since there was no legal redress at that time, she filed a complaint in 1972. In 1973, EEOC concluded that her case was retroactively applicable. In 1974, the courts decided that the University was a "person" and therefore liable for suit. In 1975, the University offered her an out-of-court settlement of $70,000, but by that time the sum barely covered attorney's fees. In 1976, the case is still pending.

The case of a female assistant professor of music who was denied reappointment exemplifies the arbitrary and capricious nature of criteria as applied to women. The department gave as a reason for her non-reappointment her "shortcomings in relationships with colleagues, students, and the public". After a detailed investigation of the charges, EEOC concluded, in part:

> "A major circumstance in this case is the fact that the entire process of determining who shall or shall not be reappointed is accomplished in a highly subjective, essentially non-reviewable, manner. It is clear from the testimony of various faculty members that highly subjective considerations, often not communicated to the unsuccessful applicant, may operate to disqualify an otherwise well qualified person. In similar context, in Rowe v. General Motors Corporation, ...the court stated:
>
> '(Such) methods for promotion...would enable an individual foreman, if he were so inclined, to exercise racial discrimination in his selection of candidates for promotion....All we do today is recognize that promotion...procedures which depend almost entirely upon the subjective evaluation and favorable recommendation of the immediate foreman are a ready mechanism for discrimination against Blacks much of which can be covertly concealed and, for that matter, not really known to management. We and others have expressed a skepticism that Black persons dependent directly on decisive recommendations from Whites can expect non-discriminatory action.'
>
> The treatment that females can expect from males under similar circumstances can be viewed with equal skepticism. The Commission states:
>
> 'We conclude that in the totality of circumstances presented in this case, i.e., that charging party was a competent aggressive female instructor denied reappointment by virtue of subjective evaluations made by a predominantly male group; that the male

> members of the tenure committee were influenced in large part by personal conflict and animus; and that the reasons for charging party's non-reappointment are belied by record evidence both testimonial and documentary, that it is reasonable to conclude that respondent's asserted defenses fail to withstand scrutiny and are pretextual.' "(9)

A third case highlights even more dramatically the lack of due process allowed in academic reviews. Sharon Johnson was denied tenure at the University of Pittsburgh's Department of Biochemistry in 1971. In 1973, the courts granted a preliminary injunction preventing the University from terminating her until the full case had been settled. in 1976, the case is still pending. At the 1973 hearing, the "findings of fact" included the following:

1. On October 27, 1971, the Chairman of the Department of Biochemistry called a meeting of the tenured professors of that Department to discuss the appointment to tenure of plaintiff.

2. The October, 1971 meeting was held without notice to plaintiff; without any request of plaintiff to supply references from whom the committee could obtain an assessment of her work; and, without affording plaintiff the opportunity to supply information on current research, or matters submitted to publications but not yet printed.

3. There is no evidence that the procedure used in October 1971 was ever before used to terminate the employment of a professional employee in the tenure stream at the University of Pittsburgh.

4. On October 27, 1971, it was decided not to grant plaintiff tenure and this was based primarily on the committee's finding that plaintiff's teaching was inadequate. This conclusion of plaintiff's teaching was purportedly based on an assessment of four lectures by plaintiff in September 1971.

5. The first lecture given by plaintiff in September, 1971 was regarded by

the Chairman as being good in its approach and content but was criticized as to placing of equations on blackboards.

6. The 1971 assessment of plaintiff's teaching failed to consider her teaching of 4 years; did not consider either plaintiff's teaching of graduate students in the Biochemistry Department, or plaintiff's other teaching functions in advising students and in laboratory instruction, nor was consideration given to the other criteria set forth in Finding No. 7.

7. Plaintiff was first notified that her employment would be terminated on January 6, 1972, in a conversation with the Chairman of the Department, after she had been made aware of the possibility at a Christmas party. She later received a letter to this effect March 8, 1972.

8. Plaintiff after several unsuccessful attempts met with the Dean of the School of Medicine in the month of March and April 1972 and thereafter met with the Senate Academic Freedom and Tenure Committee of the University of Pittsburgh. No existing procedure for further hearing by the Chancellor exists, although discussions continued for further proceedings which never materialized.

9. After October 27, 1971 the Chairman of the Biochemistry Department of the School of Medicine, Edward C. Heath, and the tenured faculty then solicited outside documentation to discredit plaintiff in an effort to substantiate their decision.

10. In the granting of tenure after seven years to a male professor, Warren Divan, the School of Medicine through Dean N. Hedearis applied different standards than those which were applied to plaintiff although Professor Divan taught some of the same courses as plaintiff and had substantially the same evaluation as a lecturer. (10)

CONCLUSION

In assessing the effectiveness of affirmative action programs, the Carnegie Council on Policy Studies in Higher Education, concluded that these programs suffer from a proliferation of regulations, inconsistency in established guidelines, interagency feuding and duplication, understaffing, and long delays in data processing. Similarly, in June, 1976, the House Subcommittee on Equal Opportunities, the General Accounting Office, the FBI, and the Justice Department conducted investigations of EEOC operations. Among the allegations are the following:(11)

1. Mismanagement and lack of supervisory capacity, ranging from malfeasance to lack of management skills.

2. Inadequate or total lack of employee training.

3. Districts backlogs; ranging from 2,100 to 6,168 cases.

4. District personnel complained that charges referred to headquarters were held there without resolution.

5. Charges referred to the Justice Department for litigation were held there without action.

6. Discrepancies in the charge backlog figures recorded by Districts and headquarters.

7. District personnel were accused of attempting to convince charging parties to accept the offers of the respondents when the offers were less than what the charging parties were due.

8. District personnel were allegedly accepting the determinations of state and local agencies without adequate review.

9. Attempts to cut backlog numbers and increase production by allegedly lowering resolution standards or cutting out procedural steps.

10. Alteration of Commission information.

11. Excessive delay in processing charges.

12. High percentage of administrative closures and no-cause determinations in District charge resolutions.

13. Commission employees destroyed files and charges.

14. Commission employees removed information from District EEO files.

15. Commission employees falsified information in charge files or altered forms.

A major problem confronting discriminated female faculty is that federal agencies have typically moved with caution in bringing institutions of higher education to task. This parallels the prevailing attitude of universities and colleges to look with disfavor on governmental intervention and to demand the right to police themselves by establishing and implementing their own code of professional behavior. Bureaucratic delays and an attitude of resistance to change at these institutions generally works to the disadvantage of faculty women who are demanding more immediate removal of barriers to their professional development. Therefore, continuous federal pressure for compliance by institutions is imperative for, "Without strong and persistent federal pressure to hire more women and minorities, there is no reason to believe that universities will do what they can to recruit and train more female and minority faculty members".(12)

Where universities are being responsive to federal pressures, they are confronted with the in-house issue of meritocracy and equal opportunity. The 1976 Ladd-Lipset Survey(13) reports some interesting faculty differences on the equality vs. meritocracy issue. Males are more likely than females to favor "merit" as a solution to the underrepresentation of women, as do whites more than blacks, older faculty more than younger, those with more publications, and those with

higher salary. The issue of "merit" vs. "equal opportunity" unnecessarily divides academicians. One camp assumes that equal opportunity is the only way to insure merit; another camp assumes that equal opportunity will destroy merit as a basis for hiring and promotion.

Women are triply hit by the meritocracy issue. First, women have traditionally had less access to avenues which can be expected to be considered "meritorious". For example, women are more likely than men to be involved in undergraduate teaching, which is not rewarded as highly as is graduate teaching and research. Second, even when a woman does engage in "meritorious" work, the subjective nature of professional evaluations is likely to result in the minimization of her work. For example, co-authorship with males may lead to questions about her "research independence", while the independence of males is seldom questioned. Third, even when her work is judged to be of sufficient quality and quantity to merit reward, there are always those who will see her status gains as not being due to her hard work and real accomplishments, but rather due to "enforced quotas", and "affirmative action" programs.

Finally, to compound the dilemma of redress for faculty women is the national trend toward litigation. Secretary Matthews of the Office of Civil Rights states that: "We live in a society that turns to litigation for resolution of everything. I think that it is inevitable, no matter which way (O.C.R. officials) decide a case, it's going to go to litigation."(14) This has great significance for the woman in academia who chooses this method of protest. She can expect the following: an interruption of her professional career through unemployment and attacks on her professional reputation, periods of psychological distress, legal fees which generally outstrip any resources she might have accumulated, a delay

of approximately four years from complaint filed to finding made, and the great likelihood that the finding will not go in her favor. It would appear then, that the right of due process cannot be exercised without considerable sacrifice to the individual.

In summary, the elimination of sex discrimination in higher education is dependent upon: ethical institutional practices; application of rigorous standards of equality by federal agencies; and, most importantly, the persistence of women in academia who recognize their right to demand what they have earned.

## FOOTNOTES

1. Carnegie Commission on Higher Education, Opportunities for Women in Higher Education, New York: McGraw-Hill, 1973, p. 123.
2. Ibid., p. 114.
3. Ibid., p. 111.
4. Astin, Helen S., and Alan E. Bayer, "Sex Discrimination in Academe", Educational Record 53 (Spring, 1973), p. 105.
5. Ibid., p. 108.
6. EEOC Ninth Annual Report, 1975, pp. 40, 42.
7. "Final Title IX Regulation Implementing Education Amendments of 1972", Department of Health, Education, and Welfare, 1975, p. 5.
8. Project on the Status and Education of Women, Association of American Colleges, Washington, D.C.
9. Digest of EEOC Decisions, 6 FEP Cases 1011.
10. Employment Practices, Commerce Clearing House, 1973, para. 8660.
11. Spokeswoman, 6 (June 15, 1976), p. 5.
12. Chronicle of Higher Education, op. cit., p. 1.
13. Ladd, Everet C. and Seymour M. Lipset, "How Faculty Members Feel About Equality", Chronicle of Higher Education (March 1, 1975), p.2.
14. Chronicle of Higher Education, op. cit., p. 10.

## BIBLIOGRAPHY


Astin, Helen S., Alan. E. Bayer, "Sex Discrimination in Academe", Educational Record 53 (Spring, 1972) 101-118.

Barrer, Myra E. (ed.), Journal of Reprints of Documents Affecting Women, Washington, D.C.:Today Publications, 1976.

Carnegie Commission on Higher Education, Opportunities for Women in Higher Education, New York: McGraw-Hill, 1973.

Change Editors, Women on Campus, New York: Change Magazine, 1975.

Cowan, Ruth B., "Legal Barriers to Social Change. The Case of Higher Education" in Impact Era Limitations and Possibilities. California Commission on the Status of Women. Millbrae: Les Femmes Publishing Company, 1976.

Fields, Charyl M., Karen J. Winkler, "U.S. Rights Agency Caught in Crossfire", Chronicle of Higher Education, 11 (February 23, 1976), 1, 10.

Gleaves, Francelia, "Women in Higher Education" in Women's Rights Almanac Gager, Nancy (ed.), 1974, Maryland: Elizabeth Cady Stanton Publishing Company, 1974, pp. 523-526.

Knudsen, Dean D., "The Declining Status of Women: Popular Myths and the Failure of Functionalist Thought", Social Forces 48 (December, 1969) 183-193.

Ladd, Everet C. and Seymour M. Lipset, "How Faculty Members Feel About Equality", Chronicle of Higher Education (March 1, 1976), 2.

"Social Science and the Citizen", The Carnegie Council and Affirmative Action, Society 13 (January/February, 1976), 6-8.

Sowell, Thomas, "Affirmative Action Reconsidered", Public Interest, (Winter, 1976), 47-65.

Specter, Russell, Paul Spiegelman, "Employment Discrimination Action Under Federal Civil Rights Acts", Model Trials, 21 (1974), 1-227.